that due process of law requires shall have prior notice." (*Id.*)

Nor is there ground for a distinction because the charter of Kansas City provided a single proceeding, embracing both the proposed condemnation and assessment for benefits, and required notice to the property owners within the benefit district. The question under the Fourteenth Amendment is one of state power, not of state policy; of what the State must accord, not of what it may grant or withhold in its discretion. *Castillo* v. *McConnico, supra; Willoughby* v. *Chicago, supra.* With respect to neither proceeding, original or supplementary, was it essential to due process of law in making assessments that the assessed owners should be heard on the amount of the awards in condemnation. Nor was there a denial of the equal protection of the laws because in the original proceeding there was such an opportunity, together with a right of appeal. The asserted inequality sprang solely from the fact that certain assessed owners, despite the defective publication of notice, appeared and acquiesced in the proceedings. There is no ground for the charge of a denial of equal protection because some owners were willing to waive defects in procedure and others were not. Differences due to voluntary action and diverse individual choices constantly arise under equal laws. We conclude that the contention based on the refusal to reopen the case as to the damages awarded is wholly without merit.

With respect to the amount of the assessments to pay these damages, it is apparent that the question presented relates solely to the right to insist upon a re-determination of the assessments laid upon the properties of other owners, which those owners had accepted and paid. Under the rulings of the court, none of the plaintiffs in error were assessable except for benefits actually and specially accruing to their respective properties; they were heard as

to these benefits and as to the amount of their own assessments. Their objection, as to the matter of apportionment, struck at the finality of the other assessments. In the only instance in which it could be said that any right under the Federal Constitution was specially and appropriately set up as to apportionment it was urged that these owners were entitled to be heard upon "what proportion of the total benefit, if any, of said improvement should be assessed against other property in the benefit district, that upon the plat of which is marked the word 'paid' as well as all other property"; and because this was not allowed, and the assessments which had been acquiesced in and paid by other owners were held to be final, a peremptory instruction was asked that the jury should assess no benefits. It is apparent that this objection goes directly to the validity of the supplemental proceeding as such and denies the power of the State to authorize it. It means that the only proceeding that could constitutionally be taken in such a case would be to have a trial *de novo* as to all the assessments; and thus, where as in this instance thousands of tracts are involved, if a defect is found in the publication of the notice in the original proceeding and a property owner challenges his assessment upon that ground, it would not be sufficient to give him a hearing as to the amount of his own assessment but he could demand as a constitutional right a re-determination of the assessments of all others.

This contention is inadmissible. It is true that all taxes and assessments are laid by some rule of apportionment. Where the scheme of distribution is palpably arbitrary and constitutes a plain abuse it may be condemned as violative of the fundamental conceptions of justice embodied in the Fourteenth Amendment. The principles involved in such cases have recently been discussed and need not be restated. *Wagner* v. *Baltimore*, 239 U. S. 207; *Houck* v. *Little River District*, 239 U. S. 254, 265;

Myles Salt Co. v. *Commissioners*, 239 U. S. 478, 485; *Gast Realty Co.* v. *Schneider Granite Co.*, 240 U. S. 55, 58, 59; *Embree* v. *Kansas City Road District*, 240 U. S. 242, 250, 251. But the mere fact that there may be inequalities is not enough to invalidate state action. *Davidson* v. *New Orleans*, 96 U. S. 97, 105; *Walston* v. *Nevin*, 128 U. S. 578, 582; *Fallbrook Irrigation District* v. *Bradley*, 164 U. S. 112, 176, 177; *Houck* v. *Little River District*, *supra*. Where assessments are made by a political subdivision, a taxing board, or court, according to special benefits, the property owner is entitled to be heard as to the amount of his assessment and upon all questions properly entering into that determination. "If the legislature," as has frequently been stated, "provides for notice to and hearing of each proprietor, at some stage of the proceedings, upon the question what proportion of the tax shall be assessed upon his land, there is no taking of his property without due process of law." *Spencer* v. *Merchant*, 125 U. S. 345, 355, 356; *Paulsen* v. *Portland*, 149 U. S. 30, 41; *Baumon* v. *Ross*, 167 U. S. 548, 590; *Goodrich* v. *Detroit*, *supra*. What is meant by his "proportion of the tax" is the amount which he should be required to pay or with which his land should be charged. As was said in *Fallbrook Irrigation District* v. *Bradley*, 164 U. S. p. 175, when it is found that the land of an owner has been duly included within a benefit district "the right which he thereafter has is to a hearing upon the question of what is termed the apportionment of the tax, *i. e.*, the amount of the tax which he is to pay." See, also, *French* v. *Barber Asphalt Paving Co.*, 181 U. S. 324, 341. It is a very different thing to say that an owner may demand as a constitutional privilege, not simply an inquiry as to the amount of the assessment with which his own property should rightly be charged in the light of all relevant facts, but that he should not be assessed at all unless the assessments of other owners who have paid without

question and are not complaining shall be re-opened and re-determined. The Fourteenth Amendment affords no basis for a demand of that sort.

The separate contention of the Union Depot Bridge Company is, as the state court said, virtually one of *res judicata*. It was insisted that as a portion of its property was assessed in the original proceeding, and the assessment had been paid, it could not be assessed on other portions in the supplemental proceeding; that it must be concluded that the jury in the original proceeding had found that the other tracts were not benefited. The question whether the first judgment had this effect was a matter of state law; there is nothing in the Federal Constitution to prevent the assessment in the supplemental proceedings of properties omitted from the first proceeding. *Phœnix Insurance Co.* v. *Tennessee*, *supra*. The Seventh Amendment, invoked in this connection, has no application. *Minneapolis & St. Louis R. R.* v. *Bombolis*, decided May 22, 1916, *ante*, p. 211. The company appeared in the supplemental proceeding and was heard, and so far as any Federal question is concerned, does not appear to be in a different case from that of the other property owners.

We find no error in the decision of the Federal questions and the judgment is affirmed.

Judgment affirmed.